

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.11.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

W.A. Nos.2326 and 2327 of 2001
and
W.A.M.P.Nos.18092 and 18093 of 2001

1. S.Balakrishnan
2. S.P.Amirthalingam
3. S.Balasubramanian ... Appellants in W.A.2326/2001
01. V.Loganathan
02. Prakasam
03. S.Nataraja Pathar
04. K.Sekar
05. R.Anandhan
06. D.Mahalingam
07. R.Ramalingam
08. G.Ganesan
09. D.Thangamani
10. Gurusamy Pathar
11. C.Shanmugam
12. V.Ramaiyya Pathar
13. V.Ramalingam
14. V.Ganesan
15. K.Thiagarajan
16. K.Thennarasu
17. K.Natarajan
18. M.Selvaraj
19. G.Sekar
20. K.Rajendran
21. AR.Renganathan
22. V.Mahalingam ... Appellants in W.A.2327/2001

-vs-

- 1.The Secretary to Government,
Tamil Culture and Religious Endowment Dept.,
Chennai - 9.

2.The Commissioner,
HR & CE Admn.,
Nungambakkam High Road,
Chennai 34.

3.The Joint Commissioner,
HR & CE Department,
Mailaduthurai,
Nagapattinam District.

4.The Executive Officer,
A/m Saranarayanaperumal Temple
Kumbakonam

Respondents in both W.As.

Writ Appeals filed under Clause 15 of Letters Patent against the order made in W.P.Nos. 13942 and 13943 of 2001, dated 05.09.2001.

WP 13942 AND 13943/2001:

pray this Court may be pleased to call for the records made in MP Nos. 2 of 1991, dt. 12.2.1992 on the file of the third respondent confirmed in A.P.No. 28/99.D2, and A.P.No. 29/99-D2, respectively dt. 29.5.2000 on the file on the Second respondent, confirmed in Govt Letter (nilai) Nos. 126 and 125, dt. 22.6.2001 on the file of the first respondent respectively.

For Appellants : Mr.T.N.Rajagopalan

For Respondents : Mr.T.Chandrasekaran,
Spl.G.P. (for R1 to R3)

Mr.D.Rajendran (for R4)

J U D G M E N T

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

These writ appeals are filed against the common order of the learned single Judge dated 05.09.2001 made in W.P.Nos.13942 and 13943 of 2001, in and by which the learned Judge, after finding that the petitioners have not made out a ground to interfere with the order of the Government, dismissed both the writ petitions.

2. Heard the learned counsel for the appellants as well as the respondents.

3. In view of the order to be passed hereunder, we are of the view that it is unnecessary to traverse all the factual details as stated by both the parties.

4. The petitioners/appellants aggrieved by the order in A.P.No.2

of 1992 dated 29.05.2000 of the Commissioner, HR & CE, preferred revision before the Government. Along with the revision, they also filed a petition to condone the delay of 118 days in filing the said revision filed against the order in A.P.No. 29 of 1992 dated 29.05.2000. In addition to the same, they have also prayed stay of operation of the order of the Commissioner, HR & CE. By order dated 22.06.2001, the Government, without going into the merits of the claim made by the petitioners, after finding that the revision filed on 25.12.2000 is beyond the prescribed period of three months under Section 114 of the HR & CE Act, rejected the appeal as barred by limitation. The said order was challenged by way of writ petitions. The learned Judge accepted the stand taken by the Government and dismissed the writ petitions.

5. The relevant provision which enables the petitioners to file revision to the Government is Section 114 of the Act. As per Section 144(4) of the said Act, the revision application has to be made to the Government within three months from the date on which the order of proceeding to which the application relates was communicated to the applicant. In the case before us, there is no dispute that the revision filed before the Government was not within three months as provided under Section 144(4) of the Act. We have already referred to the fact that the petitioners themselves filed a condonation petition along with the main revision.

6. It is not in dispute that in HR & CE Act, there is no specific exclusion of Section 5 of the Limitation Act. In this regard, it is useful to refer the judgment rendered by one of our judges (P.Sathasivam, J.) reported in 2001(3)MLJ 673 [T.Alamelu Ammal vs Mangalakshmi]. In the said decision, the question that was considered is whether Section 5 of the Limitation Act is applicable, when there is a delay in filing under Section 9(1)(a)(i) of the Madras City Tenants Protection Act, 1992 after a period of one month as prescribed therein. After considering the various decisions of this Court and the Supreme Court, it was concluded that there is no specific provision in the City Tenants Protection Act excluding the applicability of the Limitation Act and that Section 5 of the Limitation Act is applicable to an application filed under Section 9(1)(a)(i) of the Act.

7. In 1999(1)CTC534 [N.M.Palanimuthu vs. The Commissioner of HR & CE (Admn.) Dept. and five others] R.Balasubramanian, J., while considering Section 70 of HR & CE Act, 1959 after finding that there is no specific exclusion of Section 5 of the Limitation Act in the Endowments Act, arrived at a conclusion that the petition filed under Section 5 of the Limitation Act is maintainable.

8. Considering the fact that there is no specific exclusion of the Limitation Act Section 5 in particular, in the present enactment, namely HR & CE, we are in agreement with the view expressed by the

above decisions and we are of the view that the Government ought to have considered whether the petitioners have made out sufficient cause for condonation. This aspect was not properly appreciated by the learned Judge and has committed an error in dismissing the writ petitions.

9. Under these circumstances, without going into the merits of the claim made by both the parties, we set aside the order of the Government dated 22.06.2001 and direction is issued to restore the revision filed by the petitioners. It is made clear that if the Government is satisfied that there is sufficient cause for condonation, it is for them to decide and pass orders in accordance with law within a period of eight weeks from the date of receipt of copy of this order. It is further made clear that if the Government finds that there is no sufficient cause for the delay, they are free to pass appropriate order. The writ appeals are allowed to the extent mentioned above. No costs.

gms

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,
Tamil Culture and Religious Endowment Dept., Chennai - 9.
2. The Commissioner, HR & CE Admn., Nungambakkam High Road,
Chennai 34.
3. The Joint Commissioner, HR & CE Department,
Mailaduthurai, Nagapattinam District.
4. The Executive Officer,
A/m Saranarayanaperumal Temple, Kumbakonam.

1 CC TO MR.M. SRIRAM, ADVOCATE SR 55445

2 CCS TO MR.T.N. RAJAGOPALAN, ADVOCATE SR 55445 & 55104

2 CCS TO THE G.P., SR 55156 & 55155

W.A.Nos.2326 and 2327 of 200

JSK(CO)

BP/29.11

15.11.2006